

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF SOUTH CAROLINA  
FLORENCE DIVISION

Earnest Simpkins, #237351;

Plaintiff,

vs.

Warden Faulkenbery, Warden, Kershaw  
Correctional Institution (KCI); Sgt. Tucker; Cpl. Sullivan;  
Educational Coordinators; Major Neasman; Warden  
Dunlap; Lt. Fleming; Ms. Maddox, Office of SCDC  
General Counsel; Ms. Anderson, Office of SCDC General  
Counsel; Sgt. Harris; Ms. Hardin, KCI Inmate Grievance  
Coordinator (IGC), in Individual and Official Capacities;

Defendants.

C/A No. 4:05-1988-RBH

**AMENDED  
ORDER**

The Plaintiff, pro se, instituted this action jointly with two other inmates on June 30, 2005. In accordance with 28 U.S.C. § 636(b) and Local Rule 73.02 D.S.C., this matter was referred to United States Magistrate Judge Thomas E. Rogers, III, for pretrial handling. The Magistrate Judge ordered on July 13, 2005, that each Plaintiff be provided with a form Complaint in order to file a separate action. Plaintiff filed his individual Complaint on July 27, 2005. Plaintiff claims violations of his civil rights pursuant to 42 U.S.C. § 1983.

On September 13, 2005, the Magistrate Judge filed a Report and Recommendation in which he recommended that these actions be dismissed without prejudice for lack of prosecution pursuant to Rule 41(b) of the Federal Rules of Civil Procedure and also that the dismissal should be deemed a “strike” under 29 U.S.C. §1915(g).

The Magistrate Judge makes only a recommendation to this Court. The recommendation has no presumptive weight. The responsibility to make a final determination remains with this Court. See Mathews v. Weber, 423 U.S. 261, 270-71 (1976). The Court is charged with making a de novo determination of those portions of the Report and Recommendation to which specific objection is made, and the Court may accept, reject, or modify, in whole or in part, the recommendation of the Magistrate Judge or recommit the matter with instructions. See 28 U.S.C. § 636(b)(1).

The plaintiff has filed no objections to the Report and Recommendation. However, on September 20, 2005, the plaintiff did file a document entitled “Default” which requested entry of default against the defendants on the basis that defendants filed no response to the Complaint. In his document entitled “Default,” Plaintiff also requested a trial against the defendants for damages.

The Court finds that the plaintiff’s allegation that the defendants are in default is without merit. After reviewing the Report and Recommendation, it is apparent that the defendants have not been served with the Complaint as the Magistrate Judge recommended dismissal without issuance of service of process. The document filed by the Plaintiff entitled “Default” states no specific objections to the Report and Recommendation and the Court does not consider it to be an objection. To the extent the document can be considered an objection to the Magistrate’s Report and Recommendation, it would still at best be a general objection rather than a specific objection and, therefore, will not be considered.

As noted above, this Court is not required to give any explanation for adopting the recommendation absent any specific objections to the Report and Recommendation of the Magistrate Judge. See Camby v. Davis, 718 F.2d 198, 199 (4th Cir. 1983).

Therefore, for the reasons stated above and after a thorough review of the Report and Recommendation and the record in this case, the Court adopts Magistrate Judge Rogers' Report and Recommendation and incorporates it herein. It is therefore

**ORDERED** that this case be dismissed without prejudice and without issuance and service of process. This dismissal shall be deemed a strike under 29 U.S. C. §1915(g).

**IT IS SO ORDERED.**

s/ R. Bryan Harwell  
R. Bryan Harwell  
United States District Judge

Florence, South Carolina  
November 16, 2005